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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	MM Docket No. 98-35
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202	)	
of the Telecommunications Act of 1996	)	

To: The Commission

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JOINT REPLY COMMENTS OF
FOX TELEVISION STATIONS, INC. AND
USA BROADCASTING, INC.

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SUMMARY

The few commenters who argue that a national audience reach cap should be retained have presented no rational or legally-sustainable basis for doing so. The record compiled over the nearly 14 years since the cap was adopted demonstrates that expanded television station group ownership at the national level has directly resulted in increased diversity and competition at the local level, especially in the creation and delivery of news and public affairs programming. Meanwhile, even as the cap has increased from 25 to 35 percent -- a development which, according to the rule's proponents, would have been expected to enhance network power -- affiliates' bargaining power vis-à-vis their networks has increased.

Contrary to the claims of the rule's proponents that "nothing has changed" since the cap was adopted, a radically altered video marketplace has resulted in fundmental shifts in the competitive landscape. Exponential increases in the number of alternative program sources -- from DBS to cable television to the Internet -- continue to erode broadcasters' shares of viewing and advertising. There simply is no longer any basis, if there ever was one, to deny broadcasters the efficiencies inherent in expanded group ownership at the national level -- which, as the Commission previously has recognized and as the experience of Fox and USA confirms, directly benefit the public interest at the local level. Meanwhile, permitting expanded group ownership by eliminating the cap will in no way diminish competition in the highly competitive national spot advertising and program supply markets.

If a cap is retained, then the UHF discount remains a necessary corollary to it, and likewise must be preserved. The contention of certain commenters that the conversion to digital will "equalize" UHF and VHF stations and therefore obviate the discount ignores two key factors. First, because the digital allotment table replicates existing NTSC contours, the reach of UHF stations will not be enhanced by the conversion to digital. Second, any possible improvements in the reception of digital signals will benefit VHF as well as UHF stations -- in that respect they will be "equal" -- thereby only perpetuating the existing and well-documented disparties between the two services.

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JOINT REPLY COMMENTS OF FOX TELEVISION STATIONS, INC. AND USA BROADCASTING, INC.

Fox Television Stations, Inc. ("Fox") and USA Broadcasting, Inc. ("USA," and, collectively with Fox, the "Joint Commenters") hereby reply to certain comments submitted in response to the Commission's Notice of Inquiry, FCC 98-37 (released March 13, 1998) in the above-captioned proceeding.

I. INTRODUCTION

This reply addresses the few comments that dispute the public interest benefits that would result from elimination of the national ownership cap or, alternatively, that would obtain from continued recognition of the technical and market disparities between UHF and VHF television stations in the event the cap is retained. In particular, the Joint Commenters demonstrate the following:

- The contention of the Network Affiliated Stations Alliance ("NASA") and the National Association of Broadcasters ("NAB") that a national ownership cap continues to be justified is contrary to the realities of today's video marketplace and to previous Commission analysis.

- National Broadcasting Company ("NBC") and, in a joint filing, Press Communications LLC and Greater Media, Inc. ("Press/Greater Media") have not shown that the Commission suddenly should ignore the continuing, inherent disadvantages of UHF television stations in calculating their audience reach for purposes of applying a national cap.

II. THE REALITIES OF TODAY'S VIDEO MARKETPLACE DISPEL ANY PURPORTED PUBLIC INTEREST BENEFITS OF A NATIONAL TELEVISION OWNERSHIP CAP.

A. Neither of the Two Ostensible Justifications for a National Ownership Cap Serves the Public Interest.

NASA and NAB can offer only two justifications for the survival of a national ownership restriction: *first*, that the cap is necessary to protect individual or small group station owners; and, *second*, that the cap is necessary to protect local input in programming decisions. Neither contention is true.

1. Elimination of the national cap will not endanger small station owners, and will enable all television stations to compete more effectively in today's dynamic video marketplace.

A national ownership limit is not necessary to protect individual or small-group station owners. In 1995, NASA contended that permitting a party to own television stations with an aggregate reach exceeding 25 percent of the national audience would doom smaller broadcasters, either because they would choose to sell their stations to larger groups or because they would not be able to compete against stations owned by larger groups that are able to operate more efficiently than singly-owned stations. See Comments of NASA in MM Docket No. 91-221 (1995). NASA was wrong in 1995 -- smaller broadcasters have flourished for decades, notwithstanding competition from group-owned stations in their markets. But its refrain is unchanged, even though now, two years after the Telecommunications Act of 1996 (the "Telecom Act") authorized an increase in the aggregate national audience reach to 35 percent, the top-25 largest station groups *combined* own only three percent more (36 percent) of U.S. television stations than they owned in 1997. See Broadcasting & Cable, April 6, 1998, at 8. This fact alone demonstrates that elimination of the national cap would not risk the corresponding elimination of individual station owners or small station groups.

In any case, NASA ignores the fact that, fundamentally, the ability of a station to compete successfully at the local level is determined not by the size or corporate pedigree of its licensee but by its ability to generate high ratings and to operate efficiently. The Joint Commenters demonstrated, see Joint Comments at 15-19, the record compiled over the last nearly 15 years establishes, and the Commission repeatedly has recognized the efficiencies that can be realized by group owners. These efficiencies in particular enable weaker local stations -- especially UHF stations facing technical and other competitive disadvantages -- to compete more effectively in their markets.

When the national cap was adopted almost 15 years ago, television broadcasting faced little competition from other video media. Today, television broadcasters face a highly competitive market for viewers, advertising and programming on both the local and national levels. Viewers have hundreds of channels to choose from. Advertisers can sell to a similar number of video channels that compete for national advertising dollars. New video outlets have exponentially increased the opportunities for program producers to distribute their shows, and the competition for program product has pumped increasing revenues into the creative community. There is no need for national ownership limits designed to protect competition and diversity -- today's marketplace itself ensures that these goals will be achieved.

The dramatically different nature of today's video marketplace compared to 1984-85, when the national cap was adopted, is reflected in the increase in the sheer number of potential consumers of home video entertainment. Then, there were approximately 83 million television households. Today, that figure has grown to nearly 97.5 million. Other indicia of the explosive change that has characterized the video marketplace over the last decade and a half include the following:

- When the cap was adopted, there were approximately 800 commercial television stations. Today, that number has grown to 1,211 commercial stations. Broadcast Station Totals as of June 30, 1998 (released July 21, 1998).

- In 1984, the top-25 television markets combined had 301 television stations. Now, the top-25 markets combined have more than 400 stations, an average increase of more than four stations per market.

- In 1983, there were 4,825 cable systems nationwide, tallying 28 million basic subscribers. Cable penetration now stands at 64.2 million subscribers, representing 66.2 percent of television households.

Subscribers are served by more than 9,800 operating cable systems. Id. at 1050.

- Accompanying the growth in the availability of cable television has been the proliferation of cable programming networks. In 1983, the Commission tallied 51 cable networks. At the end of 1996 there were 126. Id. at 1051.

- DBS subscribership increased approximately 43 percent between July 1996 and June 1997. Video Competition Report, 13 FCC Rcd at 1070. Estimates of DBS penetration by 2002 range from 14.6 to 15 million subscribers, or approximately 14.5 percent of total television households. Id. at 1071.

- The home video recorder, relatively insignificant as a video distribution product as recently as the mid-1980s, has had an explosive impact on consumer viewing habits and preferences, and on industry behavior. VCR penetration, measured at 2.6 percent of all television households in 1983, had increased to 88 percent by the end of 1996. Fourth Annual Report, Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 13 FCC Rcd 1034, 1096 (1998) ("Video Competition Report").

- Revenue from video cassette sales and rentals in 1996 ($15.6 billion) exceeded the total advertising revenue of the six national broadcast networks ($14.7 billion). Id. at 1090, 1096.

- The amount of real-time and downloadable video available to personal computer owners continues to increase, in direct competition with over-the-air television viewing. As of August 1997, there were *20,000 hours per week* of audio and video streaming available over the Internet. Video Competition Report, 13 FCC Rcd at 1095.

- With the emergence and refinement of digital compression techniques, the number of video outlets -- both over-the-air and otherwise -- soon will explode, as what was once just enough bandwith or spectrum for a single station suddenly is able to carry multiple programming streams.

As the Joint Commenters previously have demonstrated, measured viewing patterns bear out the self-evident proposition that the proliferation of competing video programming outlets has a direct -- and adverse -- impact on the share of viewing devoted to over-the-air television stations. See Joint Comments at 10-11 (citing ratings gains reported by basic cable networks at the expense of over-the-air viewing). In both the largest and the smallest television markets, television stations compete for viewers with literally dozens of satellite delivered program sources distributed over cable systems, DBS and MMDS services. This small cross-section provides an illustrative example with respect to cable alone:

Washington, DC	Market rank: 7 Television stations licensed to community: 8 Cable system channel capacity: 68 Cable networks available: 39 Pay services available: 8
Peoria-Bloomington, IL	Market rank: 110 Television stations licensed to community: 6 Cable system channel capacity: 77 Cable networks available: 39 Pay services available: 8
San Angelo, TX	Market rank: 196 Television stations licensed to community: 3 Cable system channel capacity: 60 Cable networks available: 36 Pay services available: 6

A further, and striking, illustration of the competitive reality facing broadcasters came just last week, with the release of a Nielsen study finding that the amount of time spent viewing television in households with access to Internet and on-line services is 15 percent lower than in other homes. Snider, M., "Wired homes watch 15% less television," USA Today, August 13, 1998, at 1.

The national cap hampers the ability of all television stations to compete for viewers, programming and advertising revenues in this increasingly fragmented market. See Joint Comments at 9-11 (detailing increases in basic cable audience share and DBS subscribership). It deprives television broadcasters of the ability to realize greater production and distribution economies that, in turn, can support investment in programming and facilities. These economies are particularly critical at this time of skyrocketing programming costs and the conversion to digital transmission, both of which are taxing the resources of the broadcast industry, which does not have the benefit of subscription revenues to defray these extraordinary expenses.

The Commission's fundamental objective is to encourage broadcast operations that advance the public interest. In this proceeding in particular, the Commission is responding to a statutory directive that it "repeal or modify" regulations that, "as the result of competition," no longer serve that interest. Accordingly, the Commission should eliminate the national ownership cap, which does nothing to further the independence -- much less the survival -- of singly owned stations, while undermining the ability of all television stations to compete with an ever-increasing array of non-broadcast outlets.

2. Elimination of the national cap will not endanger, and is likely to promote, quality local programming.

NASA contends that permitting expanded group and network station ownership will "translate directly into diminished programming diversity." NASA Comments at 13. But this contention flies in the face of the Commission's previous conclusions and the record evidence compiled in proceedings dating back to 1984 and 1985. To the contrary, "the quality of the programming carried by local stations has improved" following the Commission's 1984 relaxation of the national ownership rules. Strategic Policy Research, Inc., "Comments on Filing by Network Affiliated Stations Alliance" ("SPRI Reply Study"), at 3.

The experience of both Fox and USA provides an object lesson in the beneficial ways in which group ownership at the national level directly translates into increased diversity and competition at the local level. Fox not only has made local news a priority of its owned-station group, but the Fox Network has encouraged its affiliates to develop and expand their local news programming and has actively assisted them in doing so. Meanwhile, the fundamental premise of USA's business plan is the conversion of its owned stations from outlets for national televised shopping programming into vibrant, community-based facilities presenting as much as 12 hours per day of locally produced programming. See Joint Comments at 15-19. These results confirm the Commission's prediction that group ownership would facilitate the creation of better local programming, precisely because of the increased economies of scale that can be realized through expanded ownership at the national level. See Review of the Commission's Regulations

Governing Television Broadcasting, Notice of Proposed Rulemaking, FCC 92-209 (June 12, 1992), at ¶ 11. NASA has presented no evidence to the contrary.

An expansion of television station group ownership at the national level -- while facilitating the sorts of benefits at the local level exemplified by Fox and USA -- would not adversely affect competition in either the national spot advertising or program supply markets. Broadcast networks and large station group owners already face intense competition for advertising dollars -- a trend that is only likely to continue as new advertiser-supported program sources proliferate. Indeed, in two of the last three years, advertising sales by the broadcast networks in the upfront primetime market have stagnated. See Beatty, S., "Network TV 'Upfront' Advertising Sales For Next Season Come In At Flat Levels," The Wall Street Journal, June 9, 1998, at B-1. During the same period, meanwhile, according to one industry participant, cable advertising sales volume exceeded expectations. See Cooper, J., and Consoli, J., "The Marketplace: A Line in the Sand," Adweek Magazines Newswire, June 22, 1998. Indeed, one of the nation's largest station group owners and an incipient network, PaxNet, was unsuccessful in the upfront market, precisely because, in the words of one buyer, "We've got enough places to spend tens of millions of dollars." Id. Similarly, the multitude of new program services has generated a voracious appetite for programming. This, in turn, creates new opportunities for program producers, notwithstanding the expansion of television station ownership at the national level..

NASA's reasoning is equally fallacious with respect to network station ownership. A network that owns a local station has invested a large sum of money in that station and its community. If that station performs poorly, the network will lose money on its investment. In this regard, a network's interests coincide with those of any other television station owner. For NASA to assume that a network-owned station would be less responsive to local needs than a non-network owned station defies logic. Programming that is responsive to the needs, interests and concerns of viewers at the local level is what makes free, over-the-air television broadcasting different from any of its competitors. Any station owner that ignores localism -- indeed, any station owner that fails to capitalize on the unique competitive advantage localism provides -- not only disserves the public interest, but just as clearly jeopardizes its private business interest.

NASA also argues that elimination of the national cap will imperil the ability of network affiliates to "maintain their independence to preempt inappropriate network programming in favor of important local news, public interest and local sports programming" and will transform "local broadcast stations into passive conduits for network transmissions." See NASA Comments at 12. But NASA is wrong again. First, the Commission's rules protect the ability of a network affiliate to preempt network programming "which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest," or to substitute "a program which, in the station's opinion, is of greater local or national importance." 47 C.F.R. § 73.658(e).

Second, NASA offers no evidence demonstrating that network-owned stations fail to cover "important local news, public interest and local sports programming." In fact, the opposite is true. A station simply cannot afford to ignore the needs of its local community. Network owned stations typically present significant amounts of local news and are leaders in their communities when it comes to covering events of local importance, regardless of whether this necessitates the preemption of network programming. To do otherwise undermines the competitive position of the network O&O in its local market, as well as the significant investment the network has made in the station.

Third, NASA bases its opposition on a study, conducted prior to the relaxation of the national cap, the premise of which is that allowing an entity to own stations that reach more than *25 percent* of U.S. television households would give networks the power to dominate their affiliates. See "Broadcast Television Networks and Affiliates: Economic Conditions and Relationship -- 1980 and Today," attached to NASA Comments. NASA ignores the fact that, during the past year, when networks have been permitted to own stations that reach up to 35 percent of the nation, affiliates have demonstrated more power than ever before in their dealings with their networks.

Recent news accounts are replete with evidence that networks do not and, indeed, cannot act contrary to the wishes of their affiliates. Just this year, Fox, CBS and ABC have had to engage in lengthy negotiations with their affiliates to determine how they could afford to obtain NFL programming for their affiliates.

See Broadcasting & Cable, June 22, 1998, at 32. The deals struck by the affiliates -- or, in the case of ABC's affiliates, their refusal to contribute toward the network's football rights payments -- demonstrate the stations' considerable bargaining power vis-à-vis the networks. See, e.g., Sallie Hoffmeister, "CBS Stations Agree to NFL Payout Television," Los Angeles Times, May 30, 1998, at D3; "Fox, Affiliates Reach Accord on Football Costs," Los Angeles Times, July 25, 1998, at D2.

Affiliate leverage will only continue to grow as additional national networks emerge, increasing the premium on local outlets. With six established national networks and a seventh about to launch, "stations have greater bargaining power, not less." SPRI Reply Study at 5. Indeed, more than one network could find itself without an affiliate in multiple local markets: eight of the top-fifty television markets alone have fewer than seven commercial stations. Given this enormous shift in market dynamics at the local level, and the fact that a broadcast network's distribution base of 100 percent of TV households is a critical selling point to program rights owners and advertisers, a network ignores the concerns of even a small number of its affiliates at its peril.

Because NASA ignores the testimony of recent events, the dictates of common sense, and clear evidence of group owners' dedication to local programming, the Commission cannot credit NASA's attempt to delay the elimination of the national television ownership cap.

B. The Commission Should Finish the Task Begun in the Telecom Act by Eliminating the National Cap.

As the Joint Comments demonstrate, the Commission previously has concluded that national television ownership restrictions are no longer necessary. See Joint Comments at 7-9. In the Telecom Act, Congress implicitly endorsed this result, by relaxing the then-existing limit and by expressly directing the Commission to "repeal or modify" any regulation that is no longer necessary to the public interest "as a result of competition." No statement in the Telecom Act or in the Conference Report accompanying it indicates that Congress prohibited or intended to prohibit the Commission from eliminating the cap altogether. See 47 U.S.C. § 161; H. Conf. Rep. No. 104-458, 104th Cong. (Jan. 31, 1996).

NASA can cite no evidence to the contrary. Selective quotes from the extensive floor colloquy relating to the Telecom Act provide no reason for the Commission to maintain a regulation that disserves the public interest. As a rule, floor colloquy is not controlling over the plain language of the Telecom Act, and courts have refused to credit such statements as a guide for future action. See, e.g., Weinberger v. Rossi, 456 U.S. 25, 35 & n.15 (1982). Moreover, in this case, the statements cited by NASA do not provide any reasoned justification for any ownership limit, but rather suggest only a general aversion to large station groups. None of the statements cited by NASA attempts to justify a 35 percent (or any numerical) cap or to demonstrate what might be the appropriate level at which to limit national ownership. Floor rhetoric in support of a random ownership ceiling, without more, provides no legal or legislative basis for the Commission to perpetuate the national cap.

III. THE UHF DISCOUNT REFLECTS TECHNICAL AND COMPETITIVE REALITIES FACING UHF BROADCASTERS AND SHOULD BE RETAINED.

The record demonstrates that even the existence of a vibrantly competitive video marketplace does not eliminate the fundamental basis for the discount: that UHF stations cannot be treated as the equivalent of VHF stations for purposes of calculating audience reach. UHF stations inherently require more power to cover a smaller service area than their VHF competitors, because, as the power necessary to create a particular signal is directly proportional to the frequency of the signal, the ultra high frequencies of UHF signals require far more power than the very high frequencies of VHF stations. UHF signals also lose strength more rapidly, and they are more subject than VHF signals to terrain losses. Neither increases in the level of cable penetration nor the advent of digital television can change these immutable physical laws with respect to UHF signals.

Nevertheless, both NBC and Press/Greater Media contend that increases in cable penetration in recent years justify the elimination of the UHF discount. These comments, however, ignore the Commission's previous determination that cable distribution of UHF stations is not a meaningful substitute for the superior over-the-air qualities of VHF signals, particularly as nearly one-third of Americans still do not receive cable at all, and many receive cable on only one of several household television sets. Moreover, to the extent these commenters look to the must carry rule as further justification for their position, they ignore the fact that the rule ensures carriage only for those UHF stations that can place an adequate signal over a cable headend; if a cable headend not within reach of a UHF station *is* within reach of a competing VHF station, must carry benefits only the VHF broadcaster.

Furthermore, despite suggestions by NBC and Press/Greater Media to the contrary, the current UHF/VHF disparity will continue even following the transition to digital broadcasting. First, because the digital table of allotments was designed in order to replicate existing NTSC service areas, the reach of UHF and VHF stations will not be equalized by the conversion to digital. This is so even for those UHF stations that are able to increase their allotted output power to 200 kW without creating new interference to other stations in their markets. Second, to the extent the digital conversion results in improved receiver performance, it will produce the same benefits for both VHF and UHF signals, thereby only perpetuating their technical and competitive disparities.

IV. CONCLUSION

The comments submitted in this proceeding offer no basis to prolong restrictions on national ownership of television stations. Congress has directed the Commission to eliminate regulations that competition has made obsolete. The Commission long ago concluded that the national ownership cap was an unnecessary regulatory vestige. Accordingly, in order to adhere to the directive of Congress, to advance the public interest, and to satisfy its obligation to regulate reasonably and responsibly, the Commission should complete its unfinished business and eliminate the audience reach cap.

Respectfully submitted,

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Comments on Filing by Network Affiliated Stations Alliance

John Haring
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August 21, 1998

Introduction

This paper addresses claims made by the Network Affiliated Stations Alliance ("NASA") that removal or substantial loosening of the national ownership cap (presently set at 35 percent of television households) will "increase the networks' market power to the detriment of the local community."[2] In particular, NASA asserts that increased ownership will "translate directly into diminished programming diversity."[3] NASA also claims that removing the national ownership cap will somehow result in less local news and public affairs programming.

We also address NASA's contention that eliminating the audience cap will increase the networks' bargaining power relative to that of the affiliates (although both the evidence adduced by NASA and events of recent months seem to suggest otherwise).

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1 John Haring and Chip Shooshan are principals in Strategic Policy Research, Inc., an economics and public policy consulting firm located in Bethesda, Maryland. Dr. Haring formerly served as Chief Economist and Chief, Office of Plans and Policy, at the Federal Communications Commission. Mr. Shooshan formerly served as Chief Counsel and Staff Director for what is now the Subcommittee on Telecommunications, U.S. House of Representatives. They acknowledge the contribution of their colleague, Kirsten M. Pehrsson, Senior Consultant.

2 *Comments of the Network Affiliated Stations Alliance*, before the FCC, In Re 1998 Biennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MMDocket No. 98-35, July 21, 1998 at 12 (hereinafter "NASA Comments").

3 *Ibid.* at 13.

Reduced to their simplest terms, NASA's arguments amount to an assertion that reducing the transactions costs of assembling economically valuable aggregations of local audiences somehow harms local stations and reduces their economic bargaining power. This flies in the face of economic reality: Policies that permit greater realization of production and distribution economies make affiliation with individual local stations potentially *more* valuable and thereby, if anything, *increase* their strength in bargaining negotiations. They are, in essence, enabled to bring more to the table because the net value of audience aggregation activities is enhanced.

Finally, as we have previously noted, relaxation of the national ownership cap in the past has produced beneficial results without any discernable harms. At the same time, mere elimination of the national ownership cap obviously does not *compel* any change in the status quo. Rather, with no national ownership cap, there is simply a greater opportunity for the networks (or any other group owner, for that matter) to seek out more voluntary transactions and be better positioned to realize economies of wider program distribution. If a station owner does not wish to sell, he or she is under no compulsion to do so.

Removing the National Ownership Cap Will Have No Adverse Effect On Diversity and Will Likely Improve Program Offerings

To begin with, we simply reiterate what we said in our earlier study [4] and what the Commission itself has acknowledged.[5] Diversity in broadcast voices is measured by the number of signals available to viewers in a particular *local* market. In our initial study in this proceeding, we counted an average of twelve stations in each of the markets in which Fox and USA Broadcasting own

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4 *See* John Haring and Harry M. Shooshan III, *The Emperor's New Clothes: Regulation without a Rationale*, filed as Attachment A to *Joint Comments of Fox Television Stations, Inc. and USA Broadcasting, Inc.*, before the FCC, In Re 1998 Biennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, July 21, 1998 (hereinafter "SPR Study").

5 "Relaxing the national ownership limits will not by itself increase or decrease the number of separately owned broadcast TV stations in the video program delivery market . . . the video program delivery market is a local market." *See Further Notice of Proposed Rule Making*, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, MM Docket Nos. 91-221 and 87-8, adopted December 15, 1994, released January 17, 1995, at ¶ 83.

stations.[6] If the ownership of any one of those stations changes hands, the options available to viewers in that market remain unchanged. Moreover, all evidence indicates that the efficiencies of group ownership lead to increased local news and public affairs programming, and provide group owners — both network and non-network — with the resources and distribution base necessary to invest in a greater variety of high-quality sports, national and regional news, and entertainment programming. This, too, fosters programming diversity and viewer choice at the local level.

In addition to local broadcast television outlets, viewers in many local markets have access to an increasing number of cable channels, some of which carry local and/or regional news, sports and public affairs programming (*e.g.*, NewsChannel 8 in the Washington, D.C. metro area which, coincidentally, is owned by a large broadcast group or the various regional news and sports cable services).[7] Cable and broadcast alternatives are now being supplemented by a variety of DBS and MMDS offerings. Use of the Internet is now beginning to cut into the amount of conventional viewing as consumers avail themselves of the plethora of information services carried thereon. New digital TV offerings are in the immediate offing.

Increased Ownership Opportunities Have Strengthened, Not Undermined Local Stations

In evaluating NASA's claims that expanded station ownership by the networks will adversely affect locally originated programming, one must start by asking why earlier relaxation of the ownership rules has not had that result. NASA presents *no evidence* that the viewing public has suffered *any* diminution in this regard.

As we have noted in previous studies, the quality of the programming carried by local stations has improved as a result of network ownership. Moreover, the amount of *local* programming (especially news and public affairs) carried by network-owned stations has increased. In an earlier study, we pointed out that the decision by the Fox-owned station in Washington (WTTG) to expand its local newscasts during non-prime time caused the other network-owned station (WRC)

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6 SPR Study at 6.

7 Given the growth of local and regional cable services, we find NASA's assertion that they should not be considered by the Commission in any diversity analysis (NASA Comments at 13) particularly uncompelling.

and the network affiliates in the market to expand their local news coverage in non-prime time.[8] In many cases, stations that were carrying no local news before are adding news programming. The most striking current manifestation of this trend is USA's conversion of its owned stations to full-service, community-based formats ("City Vision").

It is clear — especially in the absence of any evidence to the contrary — that there is no fundamental conflict between network ownership and localism. Networks, like any other television station owner, recognize that local news and community service are what distinguishes broadcast television from competing media and are critical to competitive success. Previous reforms have led to the formation of new networks, the strengthening of weaker networks and the creation of more locally originated programming. In an era of intensifying competition among the various video distribution media (now including the Internet), expanded national ownership is necessary for the formation of competitively viable networks and stronger local broadcast operations.

Removal of the National Ownership Cap Will Not Alter Network/Affiliate Bargaining

If, as we noted at the outset, removal of the national ownership cap simply affords greater freedom to parties to engage in mutually beneficial, voluntary transactions where they choose to do so, NASA's real concern seems to be that those stations which choose to remain affiliates will be left in a greatly weakened bargaining position in dealing with the networks.

NASA makes its claim:

> Changes in the broadcast marketplace have not altered the essential balance of power between networks and affiliates. Because the value of network affiliation continues to be substantial, and because the threat of losing that affiliation is too dangerous to risk in today's tenuous, competitive and fragmented broadcasting environment, networks can exercise significant power over affiliates.[9]

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[8] *See* John Haring and Harry M. Shooshan III, *A Numerator in Search of a Denominator*, prepared for Fox Broadcasting, May 17, 1995.

[9] NASA Comments at 5.

NASA offers no evidence that further relaxation — or even repeal — would actually change the balance of power. Its comments simply suggest that "nothing's changed" since the Commission lifted the cap in 1996, or, incredibly, that nothing has changed in network/affiliate relationships over a period that spans nearly 20 years![10]

Of course, things *have* changed significantly, not only since 1980, but even since the cap was relaxed in the wake of the 1996 Telecom Act. And these changes directly support further reform of the national ownership rules.

We note briefly developments in three areas: (1) massive increases in the supply of video programming alternatives available to consumers, advertising exposure availabilities for advertisers and venues for distribution of programming; (2) the creation and strengthening of new *broadcast* networks; and (3) the growth in the size of non-network group owners. These developments serve to enhance the bargaining power of the affiliates generally. This can be seen by the results of some important bargaining that has taken place in the last year or so over sports rights, broadcast exclusivity and affiliate compensation. Contrary to NASA's view, the picture that emerges is one of a rising cap lifting all parties.

The policy imperative for elimination of uneconomic national broadcast station ownership limits arises in the context of a sea change in the supply of video program alternatives occurring as a result of the widespread deployment of and market penetration by multichannel video program distribution systems, notably, cable television. Cable not only offers subscribers a wide array of viewing options from which to choose, but also accounts for a sizable expansion in the supply of advertising avails that advertisers have at their disposal. Both national and local advertisers now have more competitive advertising venues to exploit than ever before. Relaxation of national station ownership limitations has had no effect on the competitiveness of the market for national advertising, nor could it, given the shrinking proportion of the market accounted for by broadcast advertising. The increased number of cable channels has also obviously increased the demand for programming including syndicated programming and afforded program suppliers with additional competing outlets

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[10] NASA submits a 1995 economic study which purports to show that, at that tie, the affiliation did not have greater bargaining power than they had in 1980. [*See* NASA Comments, Attachment.] In other words, nothing has changed since 1980.